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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,289	07/23/2003	Abel G. Pereira	CRODA 3.0-013 CIP	7905
530	7590	11/12/2004	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			HARDEE, JOHN R	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/625,289

Applicant(s)

PEREIRA ET AL.

Examiner

John R. Hardee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10272003.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: The title is misspelled. "Imidazoline" has only one "m".

Appropriate correction is required.

2. Claim 5 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. This claim recites the same limitations as claim 4, from which it depends.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A recited percentage of groups R8 and R11 must be of a given chain length, but the R groups are not otherwise defined. If at least 50% must be of 17-35 carbons, what can the other 50% be?

In claim 15, "said solvent" lacks antecedent basis.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 60-81376. The reference discloses fabric treating compositions comprising perfume and ingredients A-D, of which A may be an imidazolinium compound of the form shown at

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the bottom of p. 2, col. 1. R1 and R2 are alkyl or alkenyl of 10-24 carbons, R3 is alkyl or hydroxyalkyl of 1-3 carbons (p. 2, col. 2, lines 20+), and X can be any salt forming counterion, including halogen and methyl sulfate. While mixtures of compounds having the ratios of chain lengths recited by applicant are not disclosed, use of compositions with R groups derived from beef tallow is exemplified, so the definition of the R groups clearly embraces mixtures of chain lengths. Furthermore, it is prima facie obvious to combine two compositions, each taught for the same purpose, to yield a third composition for that very purpose. *In re Kerkhoven*, 205 USPQ 1069, *In re Pinten*, 173 USPQ 801, and *In re Susi* 169 USPQ 423. When ingredients are well known and combined for their known properties, the combination is obvious absent unexpected results. *In re Crocket*, 126 USPQ 186 and *In re Pinten*, 173 USPQ 801. The person of ordinary skill in the surfactant art would expect combinations of these materials to behave in the same fashion as the individual materials, absent unexpected results. Ingredients A+B are present at 10-95% of the compositions, more preferably 50-90% by weight, and B/(A+B) is 0.5%-40% of the composition as a whole. Accordingly, the limitations of claims 61-63 can be met by following the teachings of the reference. The compositions preferably comprise hydrocarbon waxes or higher alcohols, both of which are film formers, being insoluble in water. Additional surfactants are disclosed as being present, with an ethoxylated alkyl phenol, a nonionic surfactant, being present in Example 2. The compositions are formed by making a co-melt of ingredients A-D. Addition of water is not disclosed. Claims drawn to personal care compositions recite intended use and are not afforded additional patentable weight. This reference differs

from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in a surfactant composition. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary.

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990).

9. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 58-144174 A. The reference discloses textile or hair treating compositions comprising perfume and an imidazolinium compound of the form shown at the bottom of p. 2, col. 1. R5 and R6 are alkyl or alkenyl of 12-24 carbons, R7 is alkyl or hydroxyalkyl of 1-3 carbons (p. 2, col. 2, lines 20+), and Z can be any salt forming counterion. Compositions may further comprise either or both of quats II and III, which are insoluble in water, and therefore film formers. Ingredients A and B are added to aqueous textile softeners or hair rinses at 0.1-20% by weight. Additional cationics are present. While mixtures of compounds having the ratios of chain lengths recited by applicant are not disclosed, the examiner notes that it is notoriously common in the surfactant art to use feedstocks derived from natural fats, in which a mixture of chain lengths would present.

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Furthermore, it is prima facie obvious to combine two compositions, each taught for the same purpose, to yield a third composition for that very purpose. *In re Kerkhoven*, 205 USPQ 1069, *In re Pinten*, 173 USPQ 801, and *In re Susi* 169 USPQ 423. When ingredients are well known and combined for their known properties, the combination is obvious absent unexpected results. *In re Crocket*, 126 USPQ 186 and *In re Pinten*, 173 USPQ 801. The person of ordinary skill in the surfactant art would expect combinations of these materials to behave in the same fashion as the individual materials, absent unexpected results.

10. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnabas et al., US 5,721,205. The reference discloses rinse-added fabric softening compositions comprising nonionic softener (a) and cationic softeners (b) and (c) (col. 6, lines 1+). These are preferably present at about 10-80%; 3-40%; and 10-80% respectively. Component (c) may be the imidazolinium species depicted at col. 10, line 60, in which R1 is a hydrocarbon group of 15-21 carbons, R2 is an alkylene group of 1-3 carbons; and R5 is saturated alkyl or hydroxyalkyl of 1-4 carbons. The counterion may be chloride, bromide, methylsulfate or other species (col. 13, lines 45+). Compositions preferably comprise a liquid carrier which is mostly water (col. 19, lines 35+). The compositions comprise a radical-scavenging antioxidant, which may be a natural tocopherol, also known as vitamin E (col. 14, line 22). While mixtures of compounds having the ratios of chain lengths recited by applicant are not disclosed, the examiner notes that it is notoriously common in the surfactant art to use feedstocks derived from natural fats, in which a mixture of chain lengths would present. Furthermore, it is prima

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facie obvious to combine two compositions, each taught for the same purpose, to yield a third composition for that very purpose. *In re Kerkhoven*, 205 USPQ 1069, *In re Pinten*, 173 USPQ 801, and *In re Susi* 169 USPQ 423. When ingredients are well known and combined for their known properties, the combination is obvious absent unexpected results. *In re Crocket*, 126 USPQ 186 and *In re Pinten*, 173 USPQ 801. The person of ordinary skill in the surfactant art would expect combinations of these materials to behave in the same fashion as the individual materials, absent unexpected results. This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in a surfactant composition. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (571) 272-1316.



The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "J. Hardee", is positioned above the printed name.

John R. Hardee  
Primary Examiner  
November 9, 2004